IN THE MATTER OF an Indictment filed in the Court of Queen's Bench of the Province of Manitoba charging Deveryn Donald Alexander Ross with nine counts of Fraud contrary to the *Criminal Code*;

AND IN THE MATTER OF the conviction of Deveryn Donald Alexander Ross of two counts of fraud by the Honourable Mr Justice DeGraves on the 26th day of May 1995;

AND IN THE MATTER OF an application by Deveryn Donald Alexander Ross for Ministerial Review pursuant to Part XXI.1 of the *Criminal Code of Canada*.

AN EXECUTIVE SUMMARY OF SUBMISSIONS

ON BEHALF OF

DEVERYN DONALD ALEXANDER ROSS

BACKGROUND

On May 26, 1995, Deveryn Ross was convicted of two counts of fraud over five thousand dollars by a judge sitting without a jury in Brandon, Manitoba. On June 22, 1995, he was sentenced to eighteen months imprisonment. His appeal to the Manitoba Court of Appeal was dismissed on January 9, 1996. Since his release from custody, Deveryn Ross has made continuous efforts to uncover new information and challenge his convictions. Those efforts included extensive correspondence with the Manitoba Attorney General, representations to police forces, and the retainer of a private investigator who had conversations with key figures in the case. He now lays before the Minister of Justice an application for Ministerial review, pursuant to Part XXI.1 of the *Criminal Code*. He requests that the Minister grant a remedy pursuant to s. 696.3 of the *Criminal Code*, directing a new trial in the Manitoba Court of Queen's Bench, or referring the case to the Manitoba Court of Appeal.

THE CASE AT DEVERYN ROSS'S TRIAL

Deveryn Ross was committed to stand trial on a nine-count indictment alleging that he committed the offence of fraud over $5000, contrary to s. 380(1)(a) of the *Criminal Code*. The allegations arose from his involvement, in 1990-91, in a project to bring a Perkins Family Restaurant franchise to his hometown of Brandon, Manitoba. Deveryn Ross did much of the business planning for the project, and virtually all of the legal work associated with it. Because there was no restaurant building in place at the inception of the project, the development was comprised of two distinct components: constructing and equipping the restaurant building, and operating the restaurant franchise. Deveryn Ross was involved in both.

The operators of the franchise included Deveryn Ross, his friend Kevin Lumb, and two associates of Mr. Lumb. These men raised the funds for the franchise and intended to be responsible for the daily operation of the restaurant. Although a great deal of money was lost by participants in that part of the project, and a number of allegations were made after the dissolution of the venture, no criminal charges were laid in connection with it.

The construction component of the project entailed the creation of a limited partnership known as "Perkins Limited Partnership" which included ten investors, who invested a total of one million dollars toward the enterprise. It was anticipated that, after the restaurant was constructed, the rental income from the operators of the franchise would provide a regular monthly return for the Perkins Limited Partnership investors. Because of the manner in which the investment was structured, the returns (predicted at approximately 9% per annum) would be received virtually free of income tax for the first five years. In the economic climate of 1990, that represented a very favourable return on investment.

The investors in the project were known to, and recruited by, William Knight and Sheldon Gray, two Brandon mutual fund salesmen. These two men were acquainted with Deveryn Ross because he had done legal work for them in 1989. They had each spoken of the interest of a number of their clients in a commercial real estate venture, as an alternative to an uncertain mutual fund market. When Kevin Lumb proved unable to raise capital for the building project, Mr. Knight and Mr. Gray offered to solicit the investors from that group of clients.

The recruitment of the investors happened very swiftly. In April and May of 1990, Knight and Gray began to solicit investors and quickly raised $850,000 from nine people. Each of those investors signed a subscription form, in which they each acknowledged, among other things, that they were close friends or business associates of Knight or Gray, that they had been advised to obtain independent legal and accounting advice and that they possessed sufficient investment experience and background in order to evaluate the investment. The subscription forms, signed by each of the investors, were then delivered by Knight and Gray to Deveryn Ross. Deveryn Ross did not know any of the investors. It subsequently emerged that these investors were, for the most part, elderly and unsophisticated rural Manitobans who were not (as their subscriptions affirmed) close friends or business associates of Knight or Gray, but were actually long-standing mutual fund clients who were entirely dependent on the two salesmen for investment advice.

The evidence established appalling practices on the part of Knight and Gray in their solicitation of the various investors, including extravagant representations about the nature of the investment, outright falsehoods about the risks assumed by the investors, and practices surrounding documentation which ranged from the negligent to the criminal. Despite the abundant evidence of misconduct by Knight and Gray, neither of them was charged with a criminal offence and each of them was relied upon as a Crown witness against Deveryn Ross. There was no evidence that Deveryn Ross encouraged, or was even remotely aware of, the predatory actions of Knight and Gray, or of the falsity of the subscription forms and related documentation.

In anticipation of raising one million dollars for the project, Perkins Limited Partnership was divided into forty "units", each with a face value of $25,000. It was these units which were sold to the partnership's investors. Twelve of the forty units were allocated to Deveryn Ross, William Knight and Sheldon Gray as compensation for their legal and sales work, for the assignment to the limited partnership of an "option to lease" of the property on which the restaurant was to be constructed, and for work to be done by them for the partnership in the future. It was this allocation of units to the three founders of the project which, as an "Eligible Capital Expenditure", permitted the favourable tax treatment which represented the primary appeal of the investment. At the time that the allocation of the twelve units occurred, it was anticipated that the building could be constructed and equipped, to the point of "turnkey readiness", for not more

than $700,000.00. When the initial solicitation by Knight and Gray resulted in solicitations for $850,000.00 worth of units, and not just the twenty-eight that were available for purchase, the three men each sold two of their units to one of the investors. As a result, Deveryn Ross, William Knight and Sheldon Gray each received $50,000 in May of 1990.

The Crown at trial characterized these payments as a fraud on Perkins Limited Partnership. It argued that the payments were simply "fees and commissions" for the promoters of the project, improperly paid before the costs of the building were known and the project substantially completed. The Crown viewed the payments as a fraudulent "stripping" of the assets of the partnership. The defence contended that the $150,000 was never an asset of the partnership, but that the money simply constituted payment by an investor for units which he purchased from their lawful owners, Mr. Ross, Mr. Knight and Mr. Gray. Though Knight and Gray, as Crown witnesses, purported to support the Crown theory in this regard — denying that they had ever been assigned partnership units, and claiming that they had received the money as "fees and commissions" — overwhelming evidence established that they were lying on this point and that, to their knowledge, they had indeed been assigned the units at the outset of the project and later sold them to various investors, as alleged by the defence. Though the trial judge made unfavourable comments about the size of the payments, he accepted that the they were lawfully made and acquitted Deveryn Ross on counts 1-3 of the indictment.

In July of 1990, tenders were received on the contracts for building and equipping the restaurant. It became apparent that the $700,000.00 projected budget would be inadequate for the project; costs appeared more likely to approach, or even exceed, one million dollars. Although Deveryn Ross and Kevin Lumb made substantial efforts to lower the costs of the project — rejecting all of the initial construction bids, and seeking alternatives to the more costly features of the project — it was still apparent that it could not be completed for the $700,000.00 originally estimated and raised.

In mid-July of 1999, Deveryn Ross created a second limited partnership, with the same objectives as Perkins Limited Partnership. By a sublease agreement drafted by Deveryn Ross, executed on August 20, 1990, Perkins Limited Partnership agreed to contribute $700,000.00

toward the cost of equipping and constructing the restaurant. The second limited partnership – the sub-tenant under the agreement — was then responsible for paying the balance of the construction and equipment costs. Through the second limited partnership, Deveryn Ross then began to negotiate with a broker and two local banks for financing of the additional monies needed to complete and equip the building. The actual meaning and economic effect of the August 20 agreement was to become a central issue at the trial, in respect of counts 8 and 9 of the indictment.

The Canadian Imperial Bank of Commerce loaned the required funds to the second partnership. The bank ultimately claimed that it made the decision to advance the funds in ignorance of provisions of the August 20 agreement, which granted priority over the property and assets of the second partnership to the original partnership. It emerged, however, that the deputy manager of the bank, Arthur Seddon, had received a copy of that agreement, and acknowledged it in writing on a letter dated October 6, 1990. Mr. Seddon sought to deny his signature on that letter, but the trial judge indicated that he had a reasonable doubt regarding the allegation of forgery and concluded that the bank did indeed have notice of the August 20 agreement, and of its subordinate priority over the building and equipment. It was this conclusion which ultimately led to the acquittal of Deveryn Ross on count 9 of the indictment, in which the Canadian Imperial Bank of Commerce was named as the victim.

In September of 1990, William Knight, without encouragement by Deveryn Ross, approached two of his clients and persuaded them to make a $100,000 investment in the Perkins Project. Of that money, $50,000.00 was paid to William Knight for his remaining two units. $25,000.00 was paid to each of Janette Ross, the wife of Deveryn Ross, and to Robin Gray, the wife of Sheldon Gray, for one of their units. The Crown insisted that these payments should be examined in light of the known budget shortfall which, by September 1990, had been apparent for several weeks. The Crown again sought to characterize these as payments to promoters, rather than simple sales of the unit-holders' property, and claimed that they were an illegal and unconscionable stripping of the partnership assets. This allegation underpinned counts 4-6 of the indictment. Once again,

the trial judge held that the payments were not made from the assets of the partnership and were contractually authorized. He acquitted Deveryn Ross of those counts.

The Perkins Family Restaurant opened in December of 1990. It was initially very successful, making a profit for the franchise operators, and returning the predicted rental income to the investors in Perkins Limited Partnership. In February, 1991, one of the investors, Ronald Simpson, became personally acquainted with Deveryn Ross in December of 1990 and began to visit his office periodically over the next few months. Because of the apparent success of the venture, Mr. Simpson expressed an interest in purchasing two additional units in Perkins Limited Partnership for $50,000.00, should they become available. Deveryn Ross told Mr. Simpson that one of the people who had invested in the project was interested in selling units. An important contest developed at trial over the representations made by Deveryn Ross in that regard. This became the critical issue in relation to count 7 of the indictment, on which Deveryn Ross was convicted. The Crown, relying upon the testimony of Mr. Simpson, alleged that Deveryn Ross had told him the units might become available from a "lady up north", who wished to sell her units in order to finance repairs to an apartment building. The defence maintained that Deveryn Ross had told Mr. Simpson about his communications with an investor named Marjorie Ford, who had been considering selling her units because of the wishes of her family members and had even received an offer for them from Mr. Ross. The defence led evidence that Mr. Ross had even asked another lawyer, George Bass, to make inquiries of Mrs. Ford about her wishes in that regard. Mr. Simpson, however, denied that he had spoken to Deveryn Ross about units owned by Mrs. Ford. Although Mrs. Ford acknowledged that she had considered selling her units, she denied that she had ever received an offer for them from Deveryn Ross.

In late February, 1991, Mr. Simpson paid $50,000.00 to the corporate general partner of Perkins Limited Partnership and was assigned two additional units of that partnership. It emerged in the evidence that one of the units had belonged to Robin Gray, the wife of Sheldon Gray. It had been sold to Mr. Simpson for $15,000, because Mr. Gray had wished to divest himself of the unit and had earlier offered to sell it to Deveryn Ross for $15,000. The second unit received by Mr. Simpson had belonged to Janette Ross, Deveryn Ross's wife. It was sold to Mr. Simpson for

$35,000. Although Ronald Simpson had received the two units he requested, for the amount he had offered, the Crown contended that Deveryn Ross had deceived him with a false story about the "lady up north", in order to induce him to make the purchase and conceal the $10,000 profit received by Mr. Ross. At trial, the Crown cast this allegation in the context of an alleged "fiduciary duty" owed by Deveryn Ross, as a partner, to Mr. Simpson and the other Perkins Limited Partnership investors.

The Perkins restaurant became less profitable through 1991. In June of that year, Deveryn Ross resigned from the operating side of the project, turning his shares over to Kevin Lumb. By December of 1991, under Mr. Lumb's direction, the restaurant had failed and the Perkins head office in Memphis Tennessee revoked its franchise. The CIBC quickly made a demand on its loan, and despite several efforts to negotiate a settlement, put the partnership that had borrowed the money and the partnership's corporate general partner into bankruptcy in early 1992. The building and equipment, located on leased land, proved to have very little residual value and more than eight hundred thousand of the one million dollars invested in Perkins Limited Partnership by the ten investors recruited by Knight and Gray was lost.

COUNTS 7 AND 8 OF THE INDICTMENT

The trial judge found that Deveryn Ross had committed the offence of fraud at two stages of the project, both of them after the discovery of the budget shortfall in July of 1990. He concluded that the decision to obtain the CIBC loan through the second limited partnership, without disclosing to the Perkins Limited Partnership investors the cash shortfall and alleged "transfer" of the $700,000.00 to the second partnership, constituted a fraud on Perkins Limited Partnership. It was contended that this transaction placed the assets of Perkins Limited Partnership at risk (despite the provisions of the August 20, 1990 agreement which appeared to grant Perkins Limited Partnership impregnable priority over the assets) and that the failure to give express notice of the cash shortfall and loan application to the investors constituted "dishonest non-disclosure".

The defence at trial contended that there was neither dishonesty nor deprivation on the part of Deveryn Ross toward the investors. It stressed that the economic effect of the August 20, 1990 agreement was that, in the event of default on the loan, or any other contingency affecting the interests of the investors, control over the assets purchased with the money that had been allegedly "transferred" would immediately and irrevocably revert to Perkins Limited Partnership, placing them in a superior priority position to the CIBC, and any other creditor. The defence also contended that the allegation of dishonest non-disclosure was answered by the same reasoning which had led to the acquittal of Deveryn Ross on counts 1-6 of the indictment: the link to the investors was William Knight and Sheldon Gray. The investors had no direct contact with Deveryn Ross, and did not look to him for information about the progress of the venture. The defence argued that Knight and Gray (as Gray himself admitted under oath) were aware of the salient features of the investment and the bank loan, including the cash shortfall, the financing proposal, and the creation of the second limited partnership. The defence stressed that, not only did the August 20 agreement, by its terms, purport to protect the interest of the investors, but that it had in fact done so: the complaint of the CIBC, in relation to count 9, was ultimately that the investors had indeed retained a priority position over the assets of the partnership, to the disadvantage of the bank. In spite of these arguments, the trial judge found Deveryn Ross guilty on count 8.

The resolution of count 7 depended ultimately on the testimony of Ronald Simpson. The trial judge accepted his evidence "without qualification", including his contention that Deveryn Ross had not mentioned the availability of shares from Marjorie Ford, but had told him a fictitious story about a "lady up north" with an apartment building in need of repairs. That served as the foundation for a finding of dishonesty which, the Crown argued, had prompted Mr. Simpson to invest a further $50,000.00, lost in the ultimate dissolution of the project. Though the defence advanced an explanation about the "lady up north" (that she was another investor who did, indeed, own an apartment north of Brandon), the trial judge was unpersuaded that Mr. Simpson had made a mistake in that regard. Describing the $10,000 profit made by Deveryn Ross from

the sale of the units of Robin Gray and Janette Ross as "the oldest flip in the world", he concluded that the elements of fraud had been established and entered a conviction on count 7.

NEW MATTERS OF SIGNIFICANCE

At trial, the Crown attempted to prove that Deveryn Ross misled the investors and used William Knight and Sheldon Gray as "dupes" in order to do so. The contention of the defence was that Knight and Gray were fully aware of the details of the investment, had an obligation to disclose them to the investors, and failed to do so. A number of months after the trial, it emerged that on April 18, 1995 — the same day on which the trial of Deveryn Ross commenced — Knight and Gray had entered into Settlement Agreements with the Manitoba Securities Commission, at disciplinary hearings to consider their status as licensed salesmen under the *Securities Act*. Those Settlement Agreements were never disclosed to the defence before, or during, the trial and contain admissions by Knight and Gray of a number of facts which, testifying for the Crown, they had denied at trial. In general, the Settlement Agreements captured the dishonest and self-interested conduct of Knight and Gray toward the investors — points they would not admit in cross-examination a trial, and which were central to the defence.

It has also emerged that civil lawsuits, commenced by the investors against Knight and Gray, were settled, almost certainly shortly before Knight and Gray testified in May of 1995. As an element of that settlement, Knight and Gray commenced lawsuits against Deveryn Ross (not served upon him until after each of them had testified) alleging that Mr. Ross and his former law firm had been negligent in legal advice given to Knight and Gray. It appears to have been anticipated by the investors, Knight and Gray that the Law Society of Manitoba's insurer would seek to settle those lawsuits following a criminal conviction of Deveryn Ross. Though details are still not completely clear (and it is requested that the Minister probe the matter), the information available suggests that, as part of the settlement made between Knight, Gray and the investors, the proceeds of the two malpractice lawsuits — potentially exceeding one million dollars at the time when the two lawsuits were commenced — were "assigned" by Knight and Gray to the investors. It is apparent that, unbeknownst to Deveryn Ross or his lawyer, the lawyer for the investors was to assume carriage of the lawsuits after the trial was completed. This in fact

occurred. The lawsuits were resisted by both Deveryn Ross and the Law Society's insurer, and were abandoned six years later by Knight, Gray and the investors.

Deveryn Ross's counsel at his trial was Timothy Killeen, a senior defence lawyer practising in Winnipeg. Mr. Killeen has provided an affidavit which describes in detail the many respects in which the conduct of the defence would have been different if he had received disclosure, before or during the trial, of the Settlement Agreements executed by Knight and Gray and of the entirely unexpected alignment of interests between them and the investors occasioned by the deal assigning the proceeds of the malpractice lawsuits to the investors. Mr. Killeen describes the impact that this disclosure would have had on his theory of the defence, his cross-examinations of Knight and Gray, his approach to the critical investor witnesses, and the decision about whether Deveryn Ross would testify in his own defence. It is submitted on this application that the failure to make disclosure of the Settlement Agreements and the Assignment deal deprived Deveryn Ross of a fair trial. Reliance is placed on the recent judgments of the Supreme Court of Canada in *R.* v *Dixon* (1998) 122 C.C.C. (3d) 1 (S.C.C) and *R.* v. *Taillefer* (2003), 179 C.C.C. (3d) 353 (SCC), which offer comprehensive guidance on the assessment of the impact of undisclosed evidence on the course and conduct of a trial.

New information has emerged from other sources. Prominent among this information is a taped telephone conversation between Ronald Simpson and the private investigator, Brian Savage, in 2001. In the course of this conversation, Mr. Simpson acknowledged that, in February of 1991, Deveryn Ross had told him that Marjorie Ford was indeed the investor whose Perkins Limited Partnership units might become available for purchase. Despite extensive opportunity to do so during this conversation with Mr. Savage, Mr. Simpson did not repeat his allegation that Deveryn Ross had misled him about a "lady up north", with an apartment building in need of repairs. That new information, combined with evidence that Deveryn Ross did indeed make an offer for the units of Marjorie Ford, is capable of constituting a complete answer to the allegation of dishonesty which led to the conviction of Mr. Ross on count 7 of the indictment. Because Mr. Simpson was a leading figure among the investor complainants, and an important witness for the Crown, information tending to discredit his testimony would, as Mr. Killeen describes, have had

a pervasive effect on the conduct of the case and important tactical decisions made by the defence, including whether Deveryn Ross would testify.

In the spring of 2001, Mr. Knight informed Deveryn Ross that, before Deveryn Ross was charged, counsel acting for Knight and Gray had sought immunity from prosecution from Paul Jensen, the Crown Attorney, in exchange for Knight and Gray delivering "Ross on a silver platter" to the Crown. Later in 2001, Knight repeated this information in a taped telephoned conversation with Deveryn Ross. The request for immunity, if confirmed, would stand in sharp contradiction to evidence led by the Crown at trial from one of the lead police investigators, who denied that immunity had ever been offered or even requested. It would, as Mr. Killeen describes, have provided an important avenue of cross-examination and influenced decisions made as to the conduct of the defence throughout the case.

Inquiries made by Deveryn Ross of the RCMP in early 2002 yielded two striking items of new information. First, it was acknowledged by the RCMP that Knight had executed the subscription form for the investment "on behalf of" Eleanor Clifton, an investor who, unknown to Deveryn Ross (but later conceded by Knight in his undisclosed Settlement Agreement), was of impaired mental competence and in no way suited to involvement in the Perkins project. In so doing, Knight would not only have defrauded Mrs. Clifton, but actively misled Deveryn Ross, as the defence had contended he had done throughout the project.

Second, the RCMP confirmed to Deveryn Ross that, after search warrants were executed in February of 1993 at Deveryn Ross's home, and at the law office of his solicitor in Winnipeg, no report or return was made to a Justice, as required by the *Criminal Code*. This was particularly striking and significant because a two day hearing had been conducted before the trial judge in order to determine the admissibility of evidence seized pursuant to those same search warrants, and important issues had arisen from the failure of the police to follow mandatory legal requirements after making their seizures. That motion had proceeded on the footing, supported by police testimony, that the mandatory report or return had indeed been made following the seizures. The revelation that this had not occurred exposes as false a key premise of the trial

judge's ruling on the search warrant motion. While this information does not directly raise questions about the guilt or innocence of Deveryn Ross, it gives rise to an issue that goes directly to the integrity of the administration of justice and may, under Part XXI.1 of the *Criminal Code*, constitute, or contribute to, a "miscarriage of justice".

Police records obtained by Deveryn Ross in 2002 now cast into considerable doubt one of the Crown's most prominent allegations throughout the history of this prosecution. It had been argued that the October 6, 1990 acknowledgement letter, bearing the signature of the CIBC deputy manager Arthur Seddon, had been forged by Deveryn Ross, in order to defeat the bank's claim to priority over the assets of Perkins Limited Partnership. Deveryn Ross has consistently denied this allegation and, shortly after he was charged, instructed Mr. Killeen that he wanted the document to be subjected to independent forensic examination. He has always maintained that he was prevented from having this done because the police did not return all of the seized documents, the October 6 letter in particular, to him. The police investigators claimed, however, that the documents seized from Deveryn Ross's personal lawyer had been examined by an RCMP handwriting expert, and then returned to Deveryn Ross. Brandon Police Service evidence locker records, obtained by Deveryn Ross in 2002, contradict that claim. Those recently-obtained records, examined in conjunction with other police records, and in light of the trial testimony, call into question which documents were actually examined by the handwriting expert, as well as the police assertion that all of the seized documents had been returned to Deveryn Ross. There is also a discussion within the *Memorandum* of recent legal authority calling into question the scientific reliability of handwriting comparison evidence. It is submitted that the Minister should consider this application on the footing that the allegations of forgery against Deveryn Ross, in respect of which he was acquitted at trial, have not been established and are untrue.

POSITION OF THE APPLICANT AND REQUEST FOR REMEDY

The central contention on behalf of Deveryn Ross on this application is that he was innocent of the two counts of fraud upon which he was convicted in 1995. In regard to neither of the counts did he act dishonestly toward the investors, nor did he, by act or omission, cause any "deprivation", as the law defines that element of fraud. In this respect, the application seeks a

careful review not only of the new information, but of the complex trial record, which was, in some key respects, misapprehended by the trial judge and the Manitoba Court of Appeal. Examined in light of the new information adduced with this application, the convictions on those two counts – suspect when they were entered – are now untenable.

It appears that much of the new information, which would have had a dramatic impact on every aspect of the trial, was known to the Crown (which, for legal purposes, includes both the police and the Manitoba Securities Commission) at the time of the trial and should have been disclosed to the defence. This application examines both factual and legal questions related to the issue of non-disclosure, including whether the Crown Attorney was aware of the Settlement Agreements (as well as some of the other important items of evidence) and wilfully withheld them from the defence. It requests that inquiries on this, and other issues, be conducted by the Minister's counsel or delegate. It is contended that undisclosed information in the possession of the police and the Manitoba Securities Commission establishes a violation of Deveryn Ross's right to make full answer and defence under s. 7 of the *Canadian Charter of Rights and Freedoms*, and constitutes a miscarriage of justice, for which a remedy should be directed on this application.

A PRECIS OF THE *MEMORANDUM*

The *Memorandum on Behalf of Deveryn Donald Alexander Ross* is divided into seven parts.

PART I **Introduction** sets out the history of the prosecution, summarizes the nine counts on the indictment, and describes the role of each of the four commercial entities around which the Perkins project was structured.

PART II **The Evidence at Trial** describes the history of the Perkins Project, from its inception, through the conduct of William Knight and Sheldon Gray in soliciting the investors, to the application for bank financing, the opening of the restaurant, Deveryn Ross's dealings with Ronald Simpson, and the collapse of the investment and its aftermath. This Part summarizes the evidence at trial, with particular emphasis on the two counts of which Deveryn Ross was convicted.

PART III **A Chronology of Relevant Events** sets out in detail, with extensive citations to the record, the sequence of events from the genesis of the Perkins project in 1989 to recent investigative measures in 2004. It is divided into three sections, relating to the history of the investment, the investigation and prosecution, and post-conviction inquiries. It is intended as a comprehensive resource, to which the reader may return for details of events and references to the documentary record.

PART IV **New Information** sets out the facts now known which were not part of the record at trial and which are submitted to constitute "new matters of significance", upon which the Minister may act under s. 696.4 of the *Criminal Code*. This Part examines not only the content of the new information, but its potential impact on the findings of the trial judge and key strategic decisions made by the defence. It relies in part upon the affidavit of trial counsel, setting out his view of the significance of the new information.

PART V **The Issue of Non-Disclosure** addresses the law regarding the extent of the Crown's obligation of disclosure, as it relates to the police and other investigative agencies, and sets out evidence about the question of when the police, the MSC, and Mr. Jensen came into possession of information not disclosed to the defence at trial. This Part requests that the Minister's counsel or delegate make inquiries in a number of key areas.

PART VI **The Innocence of Deveryn Ross** examines the central question of whether, in light of both the trial record and the new information, Deveryn Ross should have been convicted on either of the counts of which he was found guilty. This Part contends that Deveryn Ross committed no crime in the course of the Perkins project and that, based upon both the trial record and the new information, he was wrongly convicted.

PART VII **Miscarriage of Justice and Remedy** examines the legal meaning of miscarriage of justice, contending that it is a broad term designed to permit the widest remedial flexibility on the part of the Minister. It examines the remedies available to the Minister under Part XXI.1 of the *Code* and concludes with a request that the case be returned to the courts of Manitoba under s. 696.3.